

Proposed Rule Change by BATS Exchange  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to BATS Rule 11.9 ("Orders and Modifiers") to provide for a new order type, a Partial Post Only at Limit Order, and to eliminate the Exchange order processing behavior described in Rule 11.9 as the "price sliding process".

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name  Last Name   
 Title   
 E-mail   
 Telephone  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date   
 By    
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend BATS Rule 11.9, entitled “Orders and Modifiers,” to provide for a new order type, a Partial Post Only at Limit Order. In addition, the Exchange is proposing to eliminate an Exchange order processing behavior described in Rule 11.9 as the “price sliding process” due to the fact that this functionality is rarely selected by Users of the Exchange. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>3</sup> The Exchange requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>4</sup> If such waiver is granted by the Commission, the Exchange shall implement this rule proposal immediately.

(a) The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(c) Not applicable.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>4</sup> Id.

2. Procedures of the Self-Regulatory Organization

The Board of Directors of the Exchange approved this proposed rule change on February 4, 2009. This action constitutes requisite approval under the Exchange's By-Laws.

Questions regarding this rule filing may be directed to Eric Swanson, Senior Vice President and General Counsel of the Exchange at (212) 378-8523.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) Purpose

The purpose of the proposed rule change is to provide a new order type to Users of the Exchange, a Partial Post Only at Limit Order. The Exchange currently allows Users to enter BATS Post Only Orders,<sup>5</sup> which do not remove liquidity from the Exchange. Frequently, Exchange Users utilize BATS Post Only Orders because such Users do not want to be charged the access fee for removing liquidity from the BATS Book.<sup>6</sup> However, if such Users could receive a price better than their limit price (*i.e.*, price improvement), then the Exchange believes that such Users may wish to remove that liquidity and pay the access fee. In addition, regardless whether any part of the order is executed with price improvement, the Exchange believes that some Users of BATS Post Only Orders would be willing to remove from the BATS Book a certain amount of liquidity at the order's limit price if the residual of the order could then post to the BATS Book at that limit price. Accordingly, as proposed, the new order type will enable Users

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<sup>5</sup> As defined in Exchange Rule 11.9(c)(5).

<sup>6</sup> The Exchange currently charges \$0.0025 per share removed from the BATS Book, except for securities priced below \$1.00, for which no access fee is charged.

to: (i) enter an order to the Exchange that will remove liquidity from the Exchange when the order will receive price improvement; and (ii) designate a “Maximum Remove Percentage,” instructing the Exchange to execute up to a designated percentage of the order size remaining after any applicable price improvement execution by removing liquidity at the order’s limit price if the residual, after executions at the limit price, can be posted on the BATS Book.<sup>7</sup>

If no Maximum Remove Percentage is entered, then a Partial Post Only at Limit Order will only remove liquidity to the extent the order will obtain price improvement from its limit price. If no price improvement on an order is obtained, but a Maximum Remove Percentage has been entered with the order, then the order would execute at the limit price up to the Maximum Remove Percentage size only if, after removal of the shares set by the Maximum Remove Percentage, the order could then post to the BATS Book. As with BATS Only and BATS Post Only orders, Users may designate Partial Post Only at Limit Orders as being subject to the Exchange’s displayed price sliding process or may opt-out of displayed price sliding. Regardless of which setting is selected, an order with a Maximum Remove Percentage will only execute at its limit price if it can be posted to the BATS Book at its limit price after executions permitted by the Maximum Remove Percentage. Thus, if an order’s Maximum Remove Percentage would otherwise allow removal of all liquidity from the BATS Book at the order’s limit price, but would lock or cross another market if posted to the BATS Book and displayed

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<sup>7</sup> Because the Exchange cannot post a bid or offer with a partial share amount (e.g., 99.9 shares), any Maximum Remove Percentage that would result in such an amount will be rounded down to the next whole share amount (e.g., 99 shares).

by the Exchange at that limit price, the order would not remove any liquidity at its limit price, but rather, would be cancelled or price slid, depending on the User's instructions.<sup>8</sup>

The following examples demonstrate how the Partial Post Only at Limit Order will operate on the Exchange. For purposes of these examples, assume that in security "ABC" the Exchange has 1,000 shares of liquidity at a \$10.00 offer price and also has resting orders on its book to sell 1,000 shares at \$10.01 and 1,000 shares at \$10.03.

- *Example #1:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 1,000 shares of ABC at \$10.01 with no Maximum Remove Percentage. The order would be filled in its entirety at \$10.00.
- *Example #2:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 2,500 shares of ABC at \$10.01 with no Maximum Remove Percentage. 1,000 shares of the order would be filled at \$10.00, and the remaining 1,500 shares would be subject to the Exchange's displayed price sliding process or would be cancelled back to the User because posting such remainder at its limit price would lock the BATS Book and the User did not specify a Maximum Remove Percentage permitting removal of any liquidity at the order's limit price.
- *Example #3:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 2,500 shares of ABC at \$10.02 with no Maximum Remove Percentage. 1,000 shares of the order would be filled at \$10.00, 1,000 shares of the order would be filled at \$10.01 and the remaining 500 shares would be posted as a bid on the BATS Book at \$10.02.

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<sup>8</sup> As set forth in Exchange Rule 11.9(c)(4), the displayed price sliding process is the default but Users can elect instead to opt-out of displayed price sliding, in which case, any remainder of the order would be cancelled back to the User.

- *Example #4:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at \$10.01 with a Maximum Remove Percentage of 10 percent. 1,000 shares of the order would be filled at \$10.00 but the remainder of the order (4,000 shares) would be subject to the Exchange's displayed price sliding process or would be cancelled back to the User because the order could only remove up to 10% of the remaining order, after price improvement, at its limit price (or 400 shares) and removal of that amount would leave 600 shares of liquidity resting on the BATS Book at the limit price of \$10.01. Accordingly, the remainder of the User's order could not be posted because it would lock the BATS Book at \$10.01, and the parameters of the designated Maximum Remove Percentage would not permit additional shares to be removed at that price.
- *Example #5:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at \$10.01 with a Maximum Remove Percentage of 25 percent. 1,000 shares of the order would be filled at \$10.00, 1,000 shares would be filled at \$10.01, the order's limit price, based on the designated Maximum Remove Percentage (25% of 4,000 remaining shares would permit maximum removal at the limit price of 1,000 shares), and the remaining 3,000 shares would be posted as a bid on the BATS Book at \$10.01.
- *Example #6:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at \$10.00 with a Maximum Remove Percentage of 25 percent. Although the order would not receive any price improvement, 1,000 shares of the order would be filled at \$10.00, the order's limit price, based on the designated Maximum Remove Percentage (25% of the 5,000 share order would

permit maximum removal at the limit price of up to 1,250 shares), and the remaining 4,000 shares would be posted as a bid on the BATS Book at \$10.00.

The Exchange believes that the proposed order type benefits its Users by providing additional flexibility, in a single order type, to meet the true trading interests of market participants.

The Exchange is also proposing to eliminate references to the “price sliding process,” from the Exchange Rule 11.9. Very few Exchange Users currently utilize the price sliding process, and in fact, on certain trading days, the Exchange does not receive any orders where a User has selected this process. Instead, most Users either submit orders with the default “displayed price sliding” option selected or opt-out of displayed price sliding. Accordingly, the proposed rule change deleting the price sliding process and adopting Partial Post Only at Limit Orders without reference to the price sliding process would simplify the Exchange’s Rules by eliminating an option seldom used by Users of the Exchange.

In addition to the proposed changes above, the Exchange is proposing to make certain non-substantive changes to Exchange Rule 11.12 to update and correct cross-references to other Exchange Rules.

(b) Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>9</sup>

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<sup>9</sup> 15 U.S.C. 78f(b).

Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by allowing Users to enter a modified form of “post only” order that will execute to the extent such order will receive price improvement or remove a designated portion of the remaining order, after price improvement, at its limit price if such order could then post to the BATS Book. In addition, removal of the references to the price sliding process will simplify the Exchange’s Rules by deleting a functionality offered by the Exchange but not frequently used by market participants that submit orders to the Exchange.

The Exchange believes that Users that submit BATS Post Only Orders to the Exchange are primarily seeking to avoid access fees charged for removing liquidity, but that such Users would be willing to pay an access fee to the extent their order could obtain price improvement. Because of this price improvement, the Exchange believes that the order proposed in this rule filing will help Users obtain better prices for their orders submitted to the Exchange, even if such orders are subject to an access fee. In addition, the Exchange believes that some Users would like the added efficiency of being able to submit one order to the Exchange that will remove a certain amount of liquidity at the order’s limit price (based on the size of the order following price improvement), and then, provided all liquidity has been removed at its limit price, post to the BATS Book, rather than first submitting an order to remove liquidity at a certain price level and then submitting a BATS Post Only Order.

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<sup>10</sup> 15 U.S.C. 78f(b)(5).

4. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup> The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, and (3) will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.<sup>13</sup> Also, the Exchange believes that the proposed order type, a Partial Post Only at Limit Order, does not present any policy issues that have not

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4.

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

previously been considered by the Commission, but rather reflects the combination, in a single order type, of various existing order types currently offered pursuant to the Exchange's approved rules, as well as the rules of other market centers. Specifically, the Exchange believes that the price improvement component of the Partial Post Only at Limit Order operates similarly to the handling of any marketable limit order in that a marketable limit order currently is entitled to an execution at the best available price, which often will be price improved over the order's limit price. Similarly, the functionality of the proposed order type that would remove a specified amount of liquidity at the order's limit price if the residual would post to the BATS Book is a result that market participants can currently achieve by simultaneously submitting two orders to the Exchange – a marketable order to execute against posted liquidity followed by a BATS Post Only Order. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.

The Exchange believes that implementation of the order type described in this filing will permit it to remain competitive with another market center that has recently adopted a similar order type pursuant to an immediately effective rule filing.<sup>14</sup> In addition, the Exchange represents that it has communicated with the limited number of Users that have utilized the price sliding process over the past several months to inform such Users of the Exchange's intent to eliminate this functionality, and such Users have indicated that they have no objection to the elimination of this functionality.

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<sup>14</sup> See Securities Exchange Act Release No. 59259 (January 15, 2009), 74 FR 4491 (January 26, 2009) (notice of immediate effectiveness of rule change to establish a Post Only Order for NASDAQ OMX BX, Inc.).

Accordingly, the Exchange believes that its proposal should become immediately effective and requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>15</sup> Waiver of this requirement is consistent with the protection of investors and the public interest for the reasons described above.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of Proposed Rule Change.

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<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BATS-2009-006)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rule 11.9, entitled “Orders and Modifiers.”

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 20, 2009, BATS Exchange, Inc. (“BATS” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 11.9, entitled “Orders and Modifiers,” to provide for a new order type, a Partial Post Only at Limit Order. In addition, the Exchange is proposing to eliminate an Exchange order processing behavior described in Rule 11.9(c)(4) and (c)(5) as the “price sliding process” due to the fact that this functionality is rarely selected by Users of the Exchange.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

The text of the proposed rule change is available at the Exchange's website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide a new order type to Users of the Exchange, a Partial Post Only at Limit Order. The Exchange currently allows Users to enter BATS Post Only Orders,<sup>5</sup> which do not remove liquidity from the Exchange. Frequently, Exchange Users utilize BATS Post Only Orders because such Users do not want to be charged the access fee for removing liquidity from the BATS Book.<sup>6</sup> However, if such Users could receive a price better than their limit price (*i.e.*, price improvement), then the Exchange believes that such Users may wish to remove that liquidity and pay the access fee. In addition, regardless of whether any part of the order

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<sup>5</sup> As defined in Exchange Rule 11.9(c)(5).

<sup>6</sup> The Exchange currently charges \$0.0025 per share removed from the BATS Book, except for securities priced below \$1.00, for which no access fee is charged.

is executed with price improvement, the Exchange believes that some Users of BATS Post Only Orders would be willing to remove from the BATS Book a certain amount of liquidity at the order's limit price if the residual of the order could then post to the BATS Book at that limit price. Accordingly, as proposed, the new order type will enable Users to: (i) enter an order to the Exchange that will remove liquidity from the Exchange when the order will receive price improvement; and (ii) designate a "Maximum Remove Percentage," instructing the Exchange to execute up to a designated percentage of the order size remaining after any applicable price improvement execution by removing liquidity at the order's limit price if the residual, after executions at the limit price, can be posted on the BATS Book.<sup>7</sup>

If no Maximum Remove Percentage is entered, then a Partial Post Only at Limit Order will only remove liquidity to the extent the order will obtain price improvement from its limit price. If no price improvement on an order is obtained, but a Maximum Remove Percentage has been entered with the order, then the order would execute at the limit price up to the Maximum Remove Percentage size only if, after removal of the shares set by the Maximum Remove Percentage, the order could then post to the BATS Book. As with BATS Only and BATS Post Only orders, Users may designate Partial Post Only at Limit Orders as being subject to the Exchange's displayed price sliding process or may opt-out of displayed price sliding. Regardless of which setting is selected, an order with a Maximum Remove Percentage will only execute at its limit price if it can be posted to the BATS Book at its limit price after executions permitted by

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<sup>7</sup> Because the Exchange cannot post a bid or offer with a partial share amount (e.g., 99.9 shares), any Maximum Remove Percentage that would result in such an amount will be rounded down to the next whole share amount (e.g., 99 shares).

the Maximum Remove Percentage. Thus, if an order's Maximum Remove Percentage would otherwise allow removal of all liquidity from the BATS Book at the order's limit price, but would lock or cross another market if posted to the BATS Book and displayed by the Exchange at that limit price, the order would not remove any liquidity at its limit price, but rather, would be cancelled or price slid, depending on the User's instructions.<sup>8</sup>

The following examples demonstrate how the Partial Post Only at Limit Order will operate on the Exchange. For purposes of these examples, assume that in security "ABC" the Exchange has 1,000 shares of liquidity at a \$10.00 offer price and also has resting orders on its book to sell 1,000 shares at \$10.01 and 1,000 shares at \$10.03.

- *Example #1:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 1,000 shares of ABC at \$10.01 with no Maximum Remove Percentage. The order would be filled in its entirety at \$10.00.
- *Example #2:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 2,500 shares of ABC at \$10.01 with no Maximum Remove Percentage. 1,000 shares of the order would be filled at \$10.00, and the remaining 1,500 shares would be subject to the Exchange's displayed price sliding process or would be cancelled back to the User because posting such remainder at its limit price would lock the BATS Book and the User did not specify a Maximum Remove Percentage permitting removal of any liquidity at the order's limit price.
- *Example #3:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 2,500 shares of ABC at \$10.02 with no Maximum Remove Percentage.

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<sup>8</sup> As set forth in Exchange Rule 11.9(c)(4), the displayed price sliding process is the default but Users can elect instead to opt-out of displayed price sliding, in which case, any remainder of the order would be cancelled back to the User.

1,000 shares of the order would be filled at \$10.00, 1,000 shares of the order would be filled at \$10.01 and the remaining 500 shares would be posted as a bid on the BATS Book at \$10.02.

- *Example #4:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at \$10.01 with a Maximum Remove Percentage of 10 percent. 1,000 shares of the order would be filled at \$10.00 but the remainder of the order (4,000 shares) would be subject to the Exchange's displayed price sliding process or would be cancelled back to the User because the order could only remove up to 10% of the remaining order, after price improvement, at its limit price (or 400 shares) and removal of that amount would leave 600 shares of liquidity resting on the BATS Book at the limit price of \$10.01. Accordingly, the remainder of the User's order could not be posted because it would lock the BATS Book at \$10.01, and the parameters of the designated Maximum Remove Percentage would not permit additional shares to be removed at that price.
- *Example #5:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at \$10.01 with a Maximum Remove Percentage of 25 percent. 1,000 shares of the order would be filled at \$10.00, 1,000 shares would be filled at \$10.01, the order's limit price, based on the designated Maximum Remove Percentage (25% of 4,000 remaining shares would permit maximum removal at the limit price of 1,000 shares), and the remaining 3,000 shares would be posted as a bid on the BATS Book at \$10.01.
- *Example #6:* A User submits a Partial Post Only at Limit Order to the Exchange to buy 5,000 shares of ABC at \$10.00 with a Maximum Remove Percentage of 25

percent. Although the order would not receive any price improvement, 1,000 shares of the order would be filled at \$10.00, the order's limit price, based on the designated Maximum Remove Percentage (25% of the 5,000 share order would permit maximum removal at the limit price of up to 1,250 shares), and the remaining 4,000 shares would be posted as a bid on the BATS Book at \$10.00.

The Exchange believes that the proposed order type benefits its Users by providing additional flexibility, in a single order type, to meet the true trading interests of market participants.

The Exchange is also proposing to eliminate references to the "price sliding process," from the Exchange Rule 11.9. Very few Exchange Users currently utilize the price sliding process, and in fact, on certain trading days, the Exchange does not receive any orders where a User has selected this process. Instead, most Users either submit orders with the default "displayed price sliding" option selected or opt-out of displayed price sliding. Accordingly, the proposed rule change deleting the price sliding process and adopting Partial Post Only at Limit Orders without reference to the price sliding process would simplify the Exchange's Rules by eliminating an option seldom used by Users of the Exchange.

In addition to the proposed changes above, the Exchange is proposing to make certain non-substantive changes to Exchange Rule 11.12 to update and correct cross-references to other Exchange Rules.

## 2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national

securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest, by allowing Users to enter a modified form of “post only” order that will execute to the extent such order will receive price improvement or remove a designated portion of the remaining order, after price improvement, at its limit price if such order could then post to the BATS Book. In addition, removal of the references to the price sliding process will simplify the Exchange’s Rules by deleting a functionality offered by the Exchange but not frequently used by market participants that submit orders to the Exchange.

The Exchange believes that Users that submit BATS Post Only Orders to the Exchange are primarily seeking to avoid access fees charged for removing liquidity, but that such Users would be willing to pay an access fee to the extent their order could obtain price improvement. Because of this price improvement, the Exchange believes that the order proposed in this rule filing will help Users obtain better prices for their orders submitted to the Exchange, even if such orders are subject to an access fee. In addition, the Exchange believes that some Users would like the added efficiency of being able to submit one order to the Exchange that will remove a certain amount of liquidity at the order’s limit price (based on the size of the order following price improvement), and then, provided all liquidity has been removed at its limit price, post to the BATS Book,

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

rather than first submitting an order to remove liquidity at a certain price level and then submitting a BATS Post Only Order.

(B) Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

Rule 19b-4(f)(6)(iii)<sup>13</sup> requires the Exchange to give the Commission written notice of the Exchange's intent to file a proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

Also, as described in its filing with the Commission, the Exchange believes that the proposed order type, a Partial Post Only at Limit Order, does not present any policy issues that have not previously been considered by the Commission, but rather reflects the combination, in a single order type, of various existing order types currently offered pursuant to the Exchange's approved rules, as well as the rules of other market centers. Specifically, the Exchange believes that the price improvement component of the Partial Post Only at Limit Order operates similarly to the handling of any marketable limit order in that a marketable limit order currently is entitled to an execution at the best available price, which often will be price improved over the order's limit price. Similarly, the functionality of the proposed order type that would remove a specified amount of liquidity at the order's limit price if the residual would post to the BATS Book is a result that market participants can currently achieve by simultaneously submitting two orders to the Exchange – a marketable order to execute against posted liquidity followed by a BATS Post Only Order. For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>14</sup> 17 CFR 240.19b-4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2009-006 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File No. SR-BATS-2009-006. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BATS-2009-006 and should be submitted on or before [\_\_\_\_\_21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

Note: Proposed new language is underlined. Proposed deletions are enclosed in [brackets].

## Rules of BATS Exchange, Inc.

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### CHAPTER XI. TRADING RULES

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#### Rule 11.9. Orders and Modifiers

(No changes.)

(a) – (b) (No changes.)

(c) *Other Types of Orders and Order Modifiers.*

(1) – (3) (No changes.)

(4) *BATS Only Order.* An order that is to be ranked and executed on the Exchange pursuant to Rule 11.12 and Rule 11.13(a)(1) or cancelled, without routing away to another trading center. A BATS Only Order that, at the time of entry, would cross a Protected Quotation will be repriced to the locking price and ranked at such price in the BATS Book. A BATS Only Order that, if at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation will be displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers) (collectively, the “displayed price sliding process”). In the event the NBBO changes such that the BATS Only Order at the original locking price would not lock or cross a Protected Quotation, the order will receive a new timestamp, and will be displayed at the original locking price. [Alternatively, a BATS Only Order that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation will be repriced, ranked in the BATS Book, and displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers). In the event the NBBO changes such that the BATS Only Order would no longer lock a Protected Quotation at the original locking price, the order will receive a new timestamp, and will be re-priced and displayed at the original locking price (collectively, the “price sliding process”).] The System will default to the displayed price sliding process for a BATS Only Order unless the User has entered instructions not to use the displayed price sliding process[either to use the price sliding process or to use neither].

(5) *BATS Post Only Order.* An order that is to be ranked and executed on the Exchange pursuant to Rule 11.12 and Rule 11.13(a)(1) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the BATS Book. A BATS Post Only Order will be subject to [either] the displayed price sliding process[, the price sliding process, or neither] unless a User has

entered instructions not to use the displayed price sliding process as set forth in paragraph (c)(4) above.

(6) *Partial Post Only at Limit Order.* An order that is to be ranked and executed on the Exchange pursuant to Rule 11.12 and Rule 11.13(a)(1) or cancelled, as appropriate, without routing away to another trading center except that the order will only remove liquidity from the BATS Book under the following circumstances:

(A) A Partial Post Only at Limit Order will remove liquidity from the BATS Book up to the full size of the order if, at the time of receipt, it can be executed at prices better than its limit price (i.e., price improvement).

(B) Regardless of any liquidity removed from the BATS Book under the circumstances described in paragraph (c)(6)(A) above, a User may enter a Partial Post Only at Limit Order instructing the Exchange to also remove liquidity from the BATS Book at the order's limit price up to a designated percentage of the remaining size of the order after any execution pursuant to paragraph (c)(6)(A) above ("Maximum Remove Percentage") if, after removing such liquidity at the order's limit price, the remainder of such order can then post to the BATS Book. If no Maximum Remove Percentage is entered, such order will only remove liquidity to the extent such order will obtain price improvement as described in paragraph (c)(6)(A) above.

A Partial Post Only at Limit Order will be subject to the displayed price sliding process unless a User has entered instructions not to use the displayed price sliding process as set forth in paragraph (c)(4) above.

[(6)](7) *Pegged Order.* (No changes in text.)

[(7)](8) *Mid-Point Peg Order.* (No changes in text.)

[(8)](9) *Discretionary Order.* (No changes in text.)

[(9)](10) *Non-Displayed Order.* (No changes in text.)

[(10)](11) *Destination Specific Order.* (No changes in text.)

[(11)](12) *Modified Destination Specific Order.* (No changes in text.)

(d) – (e) (No changes.)

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Rule 11.12. Priority of Orders

(a) (No changes.)

(1) (No changes.)

(2) (No changes.)

(A) – (E) (No changes.)

(F) Discretionary portion of Discretionary Orders as set forth in Rule 11.9(c)[(8)](9).

(3) In the event an order has been cancelled or replaced in accordance with Rule 11.59(e) above, such order only retains priority if such modification involves a decrease in the size of the order. Any other modification to an order, including an increase in the size of the order and/or price change, will result in such order losing priority as compared to other orders in the BATS Book and the timestamp for such order being revised to reflect the time of the modification.

(4)– (5) (No changes.)

(b) (No changes.)